

KENT S. ROBINSON
Acting United States Attorney
District of Oregon

NEIL J. EVANS
Oregon State Bar No. 96551
Assistant United States Attorney
1000 S.W. Third Ave., Suite 600
Portland, OR 97204-2902
Telephone: (503) 727-1000
Facsimile: (503) 727-1117
Email: neil.evans@usdoj.gov

Of Attorneys for United States of America

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Case No. CR 09-30041 PA

v.

**OPPOSITION TO MOTION FOR
JUDGMENT OF ACQUITTAL**

CLIFFORD R. TRACY,

Defendant.

The Defendant Clifford Tracy (“Defendant”) was convicted on a one Count Information with the unlawful and knowing use or occupation of National Forest System land by excavating soil and/or conducting mining operations, without an approved plan when such authorization was required, in violation of 36 C.F.R. § 261.10(p). This activity took place on or about September 9, 2009 in the District of Oregon, specifically the Rogue River-Siskiyou National Forest.

Following the court trial Defendant filed a motion for judgment of acquittal arguing that he was not required to receive authorization to mine on National Forest System Lands. His argument is simply a re-hash of the legal arguments that have been rejected by this court.

A judgment of acquittal is appropriate only when the evidence at trial is insufficient to sustain a conviction. The test for reviewing the sufficiency of the evidence is whether a reasonable mind could fairly find the defendant guilty beyond a reasonable doubt, viewing the evidence in the light most favorable to the government. *United States v. Brandon*, 633 F.2d 773, 780 (9th Cir. 1980).

Since this case was a non-jury trial, this court in convicting the defendant has already weighed the evidence. Second, the evidence at trial that authorization was required to mine was not credibly contested. Both the stipulated exhibits and testimony of FS employee Kevin Johnson (with no cross examination) clearly established that an approved plan of operations was required but not obtained by the Defendant.

Defendant's legal argument in support of the motion for judgment of acquittal has been argued to the court and rejected. There is no legal or factual basis to acquit this Defendant following his court trial and conviction.

Dated this 12th day of November, 2009.

KENT S. ROBINSON
Acting United States Attorney
District of Oregon

Neil J. Evans
NEIL J. EVANS
Assistant United States Attorney
Oregon State Bar No. 96551
Attorneys for Plaintiff